

The Honorable Fred Van Sickle

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

In re METROPOLITAN SECURITIES
LITIGATION

No. CV-04-0025-FVS

THIS DOCUMENT RELATES TO:
ALL ACTIONS

PLAINTIFFS' MEMORANDUM
IN SUPPORT OF MOTION *IN*
LIMINE TO PRECLUDE PWC
ARGUMENTS THAT ROTH
CAPITAL IS LIABLE FOR ITEMS
THE COURT HAS ALREADY
RULED ROTH IS NOT LIABLE
FOR

Hearing Date: March 3, 2010
Time: 9:00 a.m.

MEM. RE: MOTION *IN LIMINE* TO
PRECLUDE PWC ARGUMENTS
THAT ROTH CAPITAL IS LIABLE - 1



1 Plaintiffs hereby move the Court *in limine* for an order precluding PwC from
2 contending at trial that settled Defendant Roth Capital Partners, LLC (“Roth”)
3 should be considered at least partly liable for the financial portions of the
4 registration statement, as well as for written portions of the registration statements
5 which the Court has already ruled on. Plaintiffs have reason to believe PwC will
6 do everything it can to make it appear that the settled defendants Roth and Ernst &
7 Young are liable for all or most of any damages suffered by the Class. However,
8 they should be barred from doing so with regard to Roth on issues that the Court
9 has ruled upon.
10

11 As the Court will recall, Roth moved for summary judgment on several
12 issues, including that (1) five specific items that Plaintiffs alleged were false or
13 misleading risk statements in various registration statements and financials, and (2)
14 there was no genuine issue of material fact as to whether it could be held liable for
15 the “expertised” portions of the registration statements, namely the financial
16 statements. Following briefing and oral argument, the Court ruled, on January 28,
17 2010, that Roth was not liable for any of the five risk statements. Ct. Rec. 941, pp.
18 2-7. The Court also ruled that Roth was not liable for the financial statements:
19
20

21 Roth was not required to perform complex financial
22 analysis, nor was it required to challenge PwC’s and
23 E&Y’s accounting determinations. Instead, Roth was
24 obligated to look for red flags. The plaintiffs have failed
25 to identify any circumstance that should have put a
26 layman on notice that PwC’s and E&Y’s accounting
determinations were untrue or misleading. As a result,
Roth was entitled to rely upon the accounting
determinations that are contained in the relevant
registration[] statements.

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1 *Id.* at 9-10. PwC should not be allowed to contradict the Court’s ruling and reopen
 2 these issues at trial. The Court has already ruled on these rulings on the statements
 3 and the financials as a matter of law. In particular, as to the financials, unless PwC
 4 wants to and can identify a “circumstance that should have put a layman on notice
 5 that PwC’s and E&Y’s accounting determinations were untrue or misleading,”
 6 there is no basis for them to argue for such liability at trial. Plaintiffs strongly
 7 suspect that PwC will not attempt to make any such argument, and unless PwC
 8 does and can show a factual basis for the argument, the issue should be closed to
 9 them at trial.
 10

11 Dated this 16th day of February, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party via email on February 16, 2010 to the following:

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